



CTIA

Building The Wireless Future

Cellular Telecommunications & Internet Association

March 31, 2004

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

Re: *Ex Parte Presentation*  
Nationwide Programmatic Agreement Regarding the Section 106 National  
Historic Preservation Act Review Process- WT Docket No. 03-128

Dear Ms. Dortch:

On March 3, 2004, the Cellular Telecommunications & Internet Association ("CTIA") filed the attached *ex parte* presentation with the Commission via the Electronic Comment Filing System ("ECFS"). Due to a clerical error, however, the *ex parte* presentation was filed in WT Docket No. 03-123, rather than in the above-captioned docket. Through this letter, CTIA hereby respectfully requests that the attached *ex parte* presentation be withdrawn from WT Docket No. 03-123, and placed in WT Docket No. 03-128.

Thank you in advance for your assistance with this request. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

Christopher R. Day  
Staff Counsel





# CTIA

*Building the Wireless Future*

Cellular Telecommunications & Internet Association

March 3, 2004

***Via Electronic Submission***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Notice of Ex Parte Communication**  
Nationwide Programmatic Agreement Regarding the  
Section 106 National Historic Preservation Act Review  
Process – WT Docket No. 03-123

Dear Ms. Dortch:

On Tuesday, March 2, 2004, Andrea Williams, Assistant General Counsel of the Cellular Telecommunications & Internet Association (“CTIA”), Andy Lechance, Regulatory Counsel for Verizon Wireless, and Peter Connolly of Holland & Knight representing U.S. Cellular Corporation, met with Jennifer Manner, Senior Counsel in the Office of Commissioner Kathleen Abernathy in regard to the above-referenced proceeding. Attached is a summary of the discussion.

Similar to the discussion with Mr. Margie, Mr. Connolly also noted the practical implications of the Nationwide Programmatic Agreement, particularly as it relates to mid-size carriers and their quest for ETC status. He also expressed concerns whether the Nationwide Programmatic Agreement adopted as a final rule meets the procedural due process requirements under the Administrative Procedures Act.



Pursuant to Section 1.1206 of the Commission's rules, this letter and the attachment are being electronically filed with your office.

Sincerely,

A handwritten signature in black ink, reading "Andrea D. Williams". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Andrea D. Williams  
Assistant General Counsel

Attachment

## Nationwide Programmatic Agreement on Section 106 Review

### Summary of Discussion

**GOAL:** A uniform, unambiguous, streamlined process for reviewing communications towers on or near historic properties.

**INDUSTRY CONCERNS:**

- Current draft of the NPA will dramatically increase costs and create further delays for an already overly burdensome and lengthy process for all the parties (FCC, SHPO and Applicants).
- Current draft of the NPA is unwieldy making compliance under the Agreement and the Commission's NEPA rules more difficult, complicated and expensive than under the current rules.

**FOUR REQUIREMENTS NECESSARY TO STREAMLINE THE SECTION 106 PROCESS IN A TIMELY AND COST EFFECTIVE WAY FOR THE FCC, SHPOS AND THE WIRELESS INDUSTRY:**

- 1) **Categorical Exclusions.** FCC adoption of ALL the categorical exclusions whereby certain tower siting activities are exempt from the Section 106 review process. The categorical exclusions set forth in the NPRM generally have little or no significant effect on or near historic properties. ***The most critical exclusions for streamlining the Section 106 process are the industrial/commercial area and highway/railway corridors exclusions.*** The FCC must maintain them if the NPA is to be a viable mechanism for streamlining the Section 106 process. CTIA members never agreed to forego these two critical categorical exclusions in exchange for addressing the eligibility issue in the NPA.
- 2) **Enforcement of the 30-day rule** requiring SHPO's to review applications and make determinations within 30 days of receipt of the application. The SHPO and Applicant must mutually agree upon any extension of the review period. The FCC should grant extensions only under very exigent circumstances. FCC's adoption of clear, uniform and reasonable documentation standards will provide certainty with respect to the type of information that must be submitted with the application, and will trigger the commencement of the 30-day review process
- 3) **Reasonable, Timely & Good Faith Efforts to Identify Historic Properties.** Consistent with the Section 106 Coalition position, the NPA should not require surveys for visual effects. The use of qualified professionals for identification purposes should be optional. The universe of eligible properties for which visual effects should be considered must be limited to those identified by the SHPO. Research required to identify such properties should be limited to reviewing previous determinations of eligibility that are clearly and easily ascertainable to the Applicant and readily available in the SHPO's office.
- 4) **Tribal Interests.** While industry acknowledges and respects the sovereignty of tribal nations and their government-to-government relationship with the FCC, the NPA's provisions regarding tribal consultation must provide a reasonable and balanced approach that promotes and supports the build out of the wireless telecommunications infrastructure and the protection of Indian cultural resources and religious sites. The FCC's Best Practices between industry and tribes regarding the siting of communications towers must remain strictly voluntary. Implementation of the Best Practices should not result in *de facto* rules. The FCC's Best Practices must not supercede or invalidate existing business relationships between certain carriers and tribes.